IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

OP.No. 32326 of 2002(W)

PETITIONER:

P.G.JAGANNIVASAN, PIDIKAPARAMBIL,
KEZHUVAMKULAM PULIANNOOR VILLAGE,
MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.P.BABU KUMAR

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
COLLECTORATE, KOTTAYAM.

2. OFFICE OF THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

3. ASSISTANT EXCISE COMMISSIONER,
KOTTAYAM.

4. EXCISE INSPECTOR,
ERATTUPETTA RANGE, ERATTUPETTA.

BY GOVERNMENT PLEADER SMT.SMITHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON 09/03/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS.54616/2002 & 19815/2003 & I.A. 5037/2006 IN O.P. NO.32326/2002

DISMISSED:

9.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE PHOTOCOPY OF JUDGMENT IN O.S. NO.367/96 OF MUNSIFF COURT DT.30.11.98.

P2: TRUE PHOTOCOPY OF ORDER IN CMP NO.13102/2000 IN O.P. NO.7869/2000 OF HON'BLE HIGH COURT DT.14.3.2000.

P3: TRUE COPY OF THE RECEIPT ISSUED BY EXCISE CIRCLE INSPECTOR, PALA DT.18.3.2000.

P4: TRUE COPY OF JUDGMENT IN O.P. 7869/00 OF THE HON'BLE HIGH COURT DT.27.10.00.

P5: TRUE PHOTOCOPY OF ORDER IN I.A. 385/00 IN A.S. 24/00 OF SUB COURT PALA DT.21.6.02.

P6: TRUE PHOTOCOPY OF RECEIPT ISSUED BY EXCISE CIRCLE INSPECTOR, PALA DT.8.4.2002.

P7: TRUE COPY OF THE STATEMENT FILED BY RESPONDENTS IN O.P. NO.7869/2000 BEFORE THE HON'BLE HIGH COURT DT.3.10.2000.

P8: TRUE COPY OF G.O. DT.18.3.95.

P9: TRUE PHOTOCOPY OF THE CHALLAN RECEIPT DT.30.3.2006.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.32326 of 2002

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Dated this the 9th day of March, 2007.

JUDGMENT

The petitioner was the licencee for two toddy shops in the Erattupetta Range in the year 1992-93. Licence was cancelled on 3.12.1992 and toddy shops were run under Department Management whereunder an amount of Rs.23,715/- was collected. Though petitioner's case is that this was first adjusted and only balance amount was demanded from the petitioner and petitioner in fact remitted the amount, respondents later reversed the adjustment and demanded the amount from the petitioner i.e. Rs.23,715/-. Against this demand petitioner filed suit for injunction before the civil court which was decreed. Even though decree was in his favour, petitioner remitted the amount for getting licence for later years. In other words, decree did not serve any purpose for the petitioner because even after obtaining favourable orders, petitioner remitted the amount for getting licence for later years. The State filed Civil Revision Petition No.473/2003 before this court against the order of the appellate court dismissing the appeal as belated and petitioner filed O.P. for getting refund of the amount paid inspite of decree of the civil court. Since the same issue

was under consideration in O.P., this court closed the C.R.P. leaving the matter to be adjudicated in this O.P.

2. I heard counsel for the petitioner and Government Pleader. The petitioner's case is that the amount collected under Department Management Scheme could be adjusted against petitioner's liability for 1992-93 and the amendment prohibiting it came into effect only on 22.12.1993. According to the petitioner, amendment is not retrospective and so much so, the petitioner was entitled to adjustment of the amount against his liability for 1992-93. Since payment was made even after obtaining injunction order from civil court only for the purpose of getting licence for later years, such payments should be treated as made under contest and it is open to the petitioner to claim refund of the amount so paid. The Commissioner of Excise is directed to consider adjustments made and it's legality and propriety with reference to Government Orders on adjustment relevant for the year 1992-93 and if adjustment of amount received under Department Management Scheme could be made against licencee's liability, the petitioner is certainly entitled to refund of the amount paid by him. However, if amendment has retrospective effect, then of course petitioner is not entitled to refund.

3. In the circumstances, O.P. is disposed of with direction to the

Commissioner to consider petitioner's claim for refund of the amount collected under Department Management Scheme which was later paid by the petitioner. The Commissioner shall pass orders within three months from the date of production of copy of this judgment along with details of payment made by the petitioner. However, I make it clear that the Commissioner is free to decide the matter without reference to civil court order which is no longer in existence after C.R.P. is disposed of. It is for him to decide the matter with reference to Government Orders and subsequent amendment and after hearing the petitioner. Since the Government Pleader pointed out that Rule 6 of the Abkari Shops (Disposal in Auction) Rules entitles the Commissioner to forfeit the amount received under Departmental Management Rules, the Commissioner should consider the application of the said Rule while considering petitioner's claim. The petitioner will be given an opportunity to produce details and Government Orders and to represent the matter before orders are issued by the Commissioner. It is open to the petitioner to produce G.O.Rt.No.123/95 and orders issued in similar cases to other parties in support of his claim. If nothing is due from the petitioner, I see no reason why the Department is retaining petitioner's title deeds. If petitioner makes application for release of title deeds, the Assistant Commissioner of Excise will consider the same

and release, if petitioner has no dues towards Welfare Fund or tax arrears.

C.N.RAMACHANDRAN NAIR
Judge

pms